1999

Proposed AMENDMENTS to the Municipal Government Act

Alberta
MUNICIPAL AFFAIRS

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Office of the Minister
Responsible for Housing, Consumer Affairs, Registries
and Local Government Services
MLA, Sherwood Park

December 1998

I am pleased to present municipalities and other stakeholders with *Proposed Amendments to the Municipal Government Act, 1999* (our "Amber Book"). This document contains as proposed amendments those stakeholder-requested amendments (as published in our "Red Book" in July 1998) that, after considering stakeholder comments, received my support and that of Standing Policy Committee (SPC). It also contains two new initiatives addressing the problem of derelict buildings and the consolidation of the Border Areas Act into the Municipal Government Act; these were also supported by me and SPC.

Approximately 150 stakeholders, including municipalities, municipal associations, non-governmental organizations and individuals provided comments. These responses were invaluable in the process of reviewing the requests for legislation and in preparing this document. Please note that some requested amendments are undergoing a wider review and may be included in future consultations.

As I indicated in my letter to you with the Red Book, I intended to provide you with the Amber Book before now. However, because of changes to the Government's legislative review process, this was not possible. I hope that this delay has not inconvenienced you.

I look forward to receiving your comments on this document. Please provide them to the address on the following page by **February 8, 1999.**

Thank you for your patience and co-operation.

Season's Greetings,

Iris Evans

424 Legislature Building, Edmonton, Alberta, Canada T5K 2B6 Telephone 403/427-3744, Fax 403/422-9550
116B, 937 Fir Street, Sherwood Park, Alberta, Canada T8A 4N6 Telephone 403/417-IRIS, Fax 403/417-4748

LOCAL GOVERNMENT SERVICES DIVISION

Municipal Services Branch

1999

Proposed

AMENDMENTS
to the
Municipal Government Act

Please provide your comments by February 8, 1999 to:

Alberta Municipal Affairs
Municipal Services Branch
Legislative Projects Unit
17th Floor - 10155 102 Street
Edmonton AB T5J 4L4
Fax: (403) 420-1016

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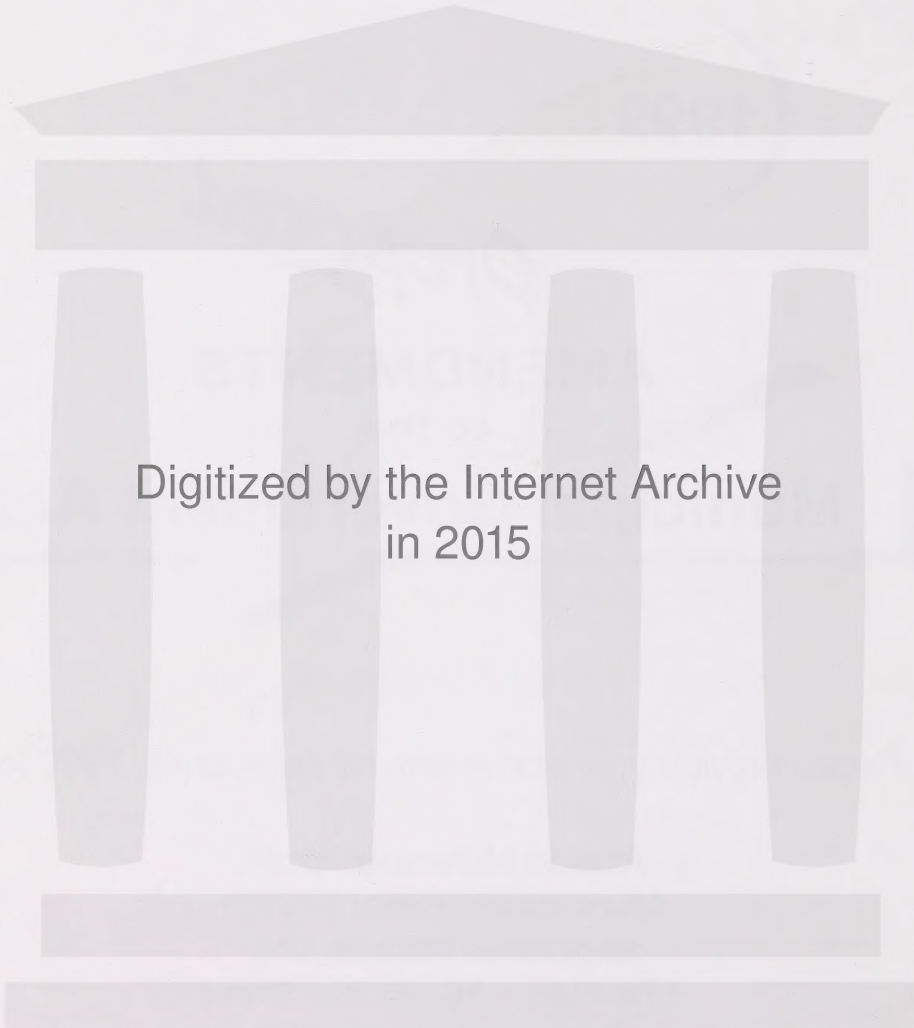

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1 Correct Referential Errors (Red Book #1)

There are a number of cross-references in the Municipal Government Act (MGA) that, due to amendments to the Act, do not refer to the correct section number.

It is proposed that amendments be made throughout the Act to correct referential errors such as replacing the reference to:

section 284(r) with 284(1)(r) in section 1(1)(n); and

section (1)(r)(iii) with (1)(r)(i) in section 298(2).

2 Add Street Lighting to Public Utility Definition (RB #2)

The definition of "public utility" includes a system or works to provide water or steam, sewage disposal, public transportation, irrigation, drainage, fuel, electric power, heat, and waste management. The definition does not include street lighting.

It is proposed that section 1(1)(y) be amended to include residential and commercial street lighting in the definition of public utility.

This would allow the municipalities to recover their costs for this service.

3 Regulate Electricity Supply to Third Party Sellers (RB #6)

The MGA has provisions regarding the regulation of gas supply obtained from direct sellers and allows the council of a municipality to enter into a tax agreement with an operator of a public utility which supplies fuel.

No comparable provisions exist with respect to electricity, nor does a municipality have the ability to collect revenues on the value of the electricity being transported for a third party.

It is proposed that a new subsection be added [360(4.1)] to provide for tax agreements for the transportation of electricity by a public utility for a third party. The section would read as follows:

> ***If a tax agreement with the operator of a public utility which supplies electric distribution access service {"distribution access service" is***

defined in paragraph 1(1)(c.1) of the Electric Utilities Act} provides for the calculation of the payment as a percentage of the gross revenue of the public utility, that gross revenue is either

gr

or the aggregate of

gr + (qu.ns x vpu)

where:

"gr" is the gross revenue of the public utility for the provision of electric distribution access service for the year;

"qu.ns" is the quantity of electricity in respect of which distribution access service was provided during the year by means of the electric distribution system of the provider of the public utility; and

"vpu" is the deemed value per unit quantity of electricity determined by the Public Utilities Board for that year for the electricity in respect of which distribution access service was so provided.

The tax agreement would identify the gross revenue on which the tax would be paid.

4 Add Restoring Rights-of-Way Costs to the Tax Roll (RB #28)

Section 553 allows a municipality to add certain types of amounts to the tax roll of a parcel of land. These include unpaid costs or charges for utilities, cleanup, or action by the municipality to remedy some problem with respect to the parcel.

There is a concern that when a licence of occupation for a right-of-way expires, the municipality must pursue the licensee in a debt action for its restoration costs if the licensee has not, as agreed, restored the parcel to the necessary condition. The MGA does not allow the municipality to add these costs to the tax roll.

It is proposed that section 553 be amended to allow a municipality to add restoration of rights-of-way costs to the tax roll when the licensee does not restore the municipally-owned right-of-way to the necessary condition at the termination of the licence.

5 Enhance Enforcement Provisions Regarding Derelict Buildings (new)

The MGA authorizes a council to pass bylaws covering the safety, health and welfare of people and the protection of people and property; nuisances, including unsightly property; and the enforcement of bylaws made under the MGA or other enactments. The municipality can impose penalties for non-compliance with such bylaws that are equal to those for breaches of the MGA.

The MGA also authorizes municipalities to order property owners to clean up, repair, or demolish dangerous or unsightly property or structures, and can take that action themselves (following expiry of appeal periods) at the owner's expense. The municipality can recover its costs by civil action or adding them to the tax roll. Non-compliance with an order is an offence with a maximum penalty of a fine of $10,000.00, imprisonment for a year, or both.

There is a concern that the provisions make enforcement difficult.

It is proposed that amendments be made to make enforcement easier and more onerous on offenders. Some of the proposals include:

- ***setting a high minimum penalty and increasing the maximum penalty for offences;***
- ***insulating the municipality from liability to the property owner if it demolishes the building;***
- ***allowing the municipality to add the costs of enforcement to the tax roll of other properties and businesses, if any, which the owner(s) of the offending property owns;***
- ***allowing actions against, and costs to be added to the tax rolls of properties of, directors, officers and shareholders of corporate offenders;***
- ***reducing notice and appeal periods;***
- ***defining "emergency" or "extraordinary circumstances" in sections 542(3), 543(4), and 551 to expand the circumstances in which a municipality can act quickly and without notice to respond to a problem; and***
- ***requiring the objection by a property owner of an inspection to be in writing and specifying the grounds for the objection.***

6 Modify Pipeline Assessment Process (RB #34)

Section 292 provides that an assessment for linear property would be based upon a report by the operator provided to the Minister by December 31. Section 304 provides that the assessed person for linear property is the operator of the linear property as defined in section 284.

The department is changing the reporting process for preparing assessments for pipelines. It is proposing to use information filed at the Alberta Energy and Utilities Board (AEUB), rather than a reliance on self-reporting, as the basis for the calculation of the pipeline assessment. Because AEUB records would be used, the liability for the taxes would therefore be with the licensee, not the operator.

It is proposed that amendments be made to provide for this revised process.

7 Clarify Appointment of Municipal Assessor (RB #37)

Section 289 provides that a municipality must appoint an assessor to prepare assessments on property other than those prepared for linear assessments. This section does not refer to the qualifications which the assessor must have to prepare assessments for a municipality.

A municipality must advise who the appointed assessor is when reporting its equalized assessment to the department, but it is sometimes unclear as to who that person is, especially if an assessment company has been contracted.

It is proposed that a provision be added to state that the assessor must meet the qualifications as stated in the regulation.

The proposed Qualifications of Assessor Regulation would be drafted so as not to be exclusive. It would include members of the Alberta Association of the Appraisal Institute of Canada, the International Association of Assessing Officers, and any other valuation professional who met the same standards. This would ensure that municipalities are using qualified assessment professionals as their appointed assessor.

8 Assess Sites Under Machinery and Equipment (RB #47)

The MGA provides that well sites be assessed at market value and the assessed person is the operator.

Machinery and equipment is assessed at regulated values and the assessed person is the owner of the machinery and equipment.

However, sites containing machinery and equipment, such as battery sites, are assessed at market value for the surrounding area and the assessed person is the owner of the parcel.

It is proposed that amendments be made to provide that the assessed property for sites containing machinery and equipment include a market value for the site which would be assessed to the owner of the machinery and equipment.

The proposed amendment would treat sites containing machinery and equipment (such as a battery site) in a similar fashion as well sites.

9 Expand Property Assessment of Industrial Lease Sites (RB #48)

Currently, oil and gas well lease sites on privately-held farm land are assessed and taxed directly to the oil or gas company (the lessee). Other leases on farm land, including buildings and improvements, are assessed and taxed to the owner of the parcel (the farmer).

It appears that some municipalities are sending assessment and tax notices for buildings and machinery and equipment on battery and compressor sites directly to the oil companies. The MGA requires that the assessment and tax notice be sent to the property owner.

It is proposed that a new section be added to provide that property, including buildings and improvements, used for the purposes of battery or compressor sites is to be assessed to the lessee.

10 Clarify Tax Rates for Non-Residential and Machinery and Equipment Assessment Classes (RB #57)

Section 353(2)(a) refers to the property tax bylaw authorizing the council to impose a tax in respect of property in the municipality to raise revenue to be used towards the expenditures and transfers set out in the budget of the municipality.

Section 354(1) states that the bylaw must show separately all of the tax rates used. The tax rate may be different for each assessment class or sub-class.

There is a concern that the requirement in section 354(3) that machinery and equipment and non-residential tax rates must be the same to raise the revenue for payments under section 353(2)(a) is being overlooked because of the way it and section 354(3) are written.

It is proposed that section 354(3.1) be amended to clarify that, despite subsection (3), machinery and equipment and non-residential tax rates to raise the revenue for payments under section 353(2)(a) must be the same.

11 Add Another Method for Determining Business Assessment Value (RB #73)

Section 374(1)(b) provides four methods that can be used to prepare assessments for businesses operating within the municipality which are to be recorded on the business assessment roll.

A suggestion has been made to add net annual rental value standard as another method of determining business assessment values. The net annual rental value standard would allow business assessments to be determined by, and be more reflective of, the data and analysis that will be used to prepare market value property assessments for the types of properties in which businesses are generally located.

It is proposed that section 374(1)(b) be amended to add the following subsection:

> ***"(v) assessment based on the net annual rental value of the premises."***

12 Change "Parcel of Land" to "Property" in Special Tax Provision (RB #77)

Section 387 states that the person liable to pay the special tax is the owner of the "parcel of land".

The reference to "parcel of land" does not allow for an assessment based on improvements only. The reference to "property", however, includes land, improvements, or both.

It is proposed that section 387 be amended to change "parcel of land" to "property".

If section 387 is amended, then the reference in 553(f) may have to be amended.

13 Vary Local Improvement Tax Rate (RB #78)

Section 403 provides for the amendment of a local improvement bylaw in circumstances where council receives additional financial assistance, refinances a debt at a lower interest rate, or where an alteration is necessary as a result of an assessment appeal under Part 11 (assessment review board) or Part 12 (Municipal Government Board).

There is no provision for the amendment of a local improvement bylaw where costs have increased. Municipalities have an obligation to carefully determine the cost of any improvements constructed pursuant to a local improvement bylaw. However, there are circumstances where, through no fault of the municipality, even the most careful calculation of costs or expenditure of funds may be insufficient.

To require the ratepayers at large to pay for these overages through taxes when they do not receive any benefit from the improvement is not consistent with the intent of the local improvement process.

It is proposed that a new provision be added to allow for the revision of a local improvement bylaw where costs have increased, subject to conditions or controls which would be necessary to ensure that cost estimates are not intentionally underestimated.

14 Deny Assessment Complaints and Appeals if Required Fees Not Paid (RB #83)

The MGA states that a person wishing to make a complaint about any assessment or tax notice must do so in accordance with section 460. In addition, section 481 stipulates that council may set fees payable by persons wishing to make a complaint to an assessment review board.

Section 460 does not make the payment of a fee a prerequisite to a complaint being heard.

It is proposed that amendments be made to state that, if council sets a fee as a prerequisite for an assessment complaint, an assessment complaint and subsequent appeal may be made only if the required fee has been paid. Furthermore, if the appeal is successful, the fee shall be reimbursed to the person making the appeal.

15 Establish Maximum Fees for Assessment Complaints (RB #86)

Section 481(1) states that a council may set fees payable by persons wishing to make complaints or to be involved as a party or intervenor in a hearing before an assessment review board. This fee is refundable if the decision of the assessment review board is in favour of the complainant.

Some taxpayers have protested that the fees set by council are exorbitant. If the assessment review board confirms their assessment (they therefore cannot get a refund), they can appeal to the Municipal Government Board. The fee paid to the municipality is not refundable if the decision of the Municipal Government Board is in favour of the complainant.

It is proposed that amendments be made to establish maximum fees which can be levied by a municipality for an assessment complaint. These maximum fees would be established for each assessment class provided for in section 297.

16 Enforce Reporting Requirements for Designated Manufactured Homes (RB #97)

A new tax recovery process was introduced in 1998 for designated manufactured homes.

Section 436.24 addressed reporting requirements regarding ownership and movement of designated manufactured homes. However, an enforcement clause was not included.

It is proposed that a new subsection 436.24(3) be added that states:

> ***"(3) Failure to comply with a bylaw passed under subsection (2) is deemed to be an offence under this Act and is subject to the penalties specified in section 566."***

17 Add Mediation as a Prerequisite to Dispute Hearings (RB #99)

The MGA allows the Municipal Government Board (MGB) to hear certain disputes involving both municipalities and landowners. Specifically, these are:

- appeals pursuant to section 619;
- intermunicipal disputes; and
- disputed annexation applications.

In each of these situations the MGB is required to hold a formal hearing and to make a decision. Hearings are often time-consuming and expensive. The decision may not completely satisfy the parties involved. Prior to the dispute being filed with the MGB, it would be advantageous to require all parties involved in a dispute to attempt a joint resolution of the particular dispute.

It is proposed that new provisions be added to require that the parties involved have signed a statutory declaration that a mediation process or other dispute resolution process has taken place prior to applying to the MGB for a hearing regarding intermunicipal disputes, contested annexations, or appeals under section 619.

It is also proposed that a provision be added stating the MGB must not accept an application for these types of hearings unless it is in receipt of a statutory declaration signed by all parties to the application.

18 Consolidation of Border Areas Act (BAA) Into the MGA (new)

The existing BAA was passed in 1955 and has remained essentially the same. It authorizes "approved districts" or municipalities bordering provinces (currently British Columbia and Saskatchewan) to make agreements with a "co-operating authority" in the other province. These agreements can provide for the extension of the benefits of any institution, works, construction, improvement or service by either of the parties to the other. The BAA contains certain requirements for the agreements including the approval of the Lieutenant Governor in Council.

While some municipalities have advised that they have these types of agreements, most are unaware of the BAA's existence, and as far as can be determined, none has submitted its agreements for approval. In addition, because of changes to other Acts and the names of organizations or entities under them, "approved districts" does not capture certain types of organizations.

It is proposed that the Border Areas Act be repealed and certain sections, with new or amended sections, be inserted into the MGA to maintain the authority of municipalities and other entities to enter into these types of agreements. These are as follows:

A. Definitions

Some terms and definitions include the following:

1) ***"local authority": use definition in the MGA;***

2) ***"regional authority": (new) any authority constituted under an enactment, and including, without limiting the generality of the foregoing, drainage, irrigation, or ambulance districts, and regional police commissions providing services in and to regions in Alberta, that do not have provisions in their establishing enactments authorizing, regulating, or prohibiting the types of agreements contemplated by this Act;***

3) ***"co-operating authority": an authority governing the local affairs of any part of a province or territory adjoining Alberta, and with which authority a local or regional authority enters into, or proposes to enter into, an agreement under this Act;***

4) ***"council": use definition in the MGA; and***

5) *"institution": any building or site of any nature that is likely to be of general benefit to the inhabitants of a local or regional authority.*

B. Authority to make agreements

Amend section 54 of the MGA to provide that a local or regional authority can enter into an agreement with a co-operating authority to have one extend the benefit of any institution, works, construction, improvement or service to the other.

C. Acquisition and improvements of sites for institutions

Amend section 72 of the MGA to extend authorization to acquire and improve sites to local, regional, and co-operating authorities.

D. Prohibition against higher tax rate on Alberta residents or property

Insert provisions from BAA prohibiting a higher tax rate on Alberta residents or property for raising funds for carrying out the agreement than could be imposed if the institution, works, construction, improvement or service had been provided under law of Alberta.

E. Publication of (proposed) agreement or relevant terms in newspaper

The (proposed) agreement or the relevant details of it must be advertised according to the requirements of section 606 of the MGA (in a newspaper in general circulation in the vicinity once a week for two consecutive weeks).

F. Government approval

The (proposed) agreement must be submitted to the Minister as a record. If the agreement contains provisions outside the scope of the MGA, it is ineffective without the Minister's approval. Approval may be granted if the Minister is satisfied that the agreement is honestly intended to meet the reasonable requirements of the parties.

G. Effective date of agreement

The agreement, if it is signed and properly ratified by the local or regional and co-operating authorities, and does not require the Minister's approval, is effective on the second date of publication in

the newspaper after signing and ratification. If it requires the Minister's approval, it is effective on the date the Minister signs the Order.

H. Effect on Alberta local and regional authorities of other jurisdictions' similar enactments

Another province or territory may have a subsisting enactment respecting a local or regional authority or an institution of the kind to which an agreement under this Act relates. The following conditions may apply:

1. ***The Minister may declare that a subsisting enactment of another province or territory applies to a local or regional authority or an institution in Alberta.***

2. ***The Minister and the Government of the other province or territory may agree that some provisions of the enactment do not apply, or apply with modifications.***

I. Transitional

Any agreements made and approved under the BAA are continued. Any agreements to which the BAA would have applied but were not submitted for approval must be submitted to the Minister for information and/or approval if necessary.

This issue arose as part of the department's and the Government's ongoing initiative to review legislation and regulations to ensure their currency and relevance.

COMMENTS

Thank you for taking the time to review this consultation paper and to provide your views.

Please send in your comments by February 8, 1999.

Proposed Amendments for 1999 to the Municipal Government Act

Respondent: _____

Position: _____

Representing: _____

Comments Relating to Governance and Administration

1 Correct Referential Errors

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2 Add Street Lighting to Public Utility Definition

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3 Regulate Electricity Supply to Third Party Sellers

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4 Add Restoring Rights-of-Way Costs to the Tax Roll

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5 Enhance Enforcement Provisions Regarding Derelict Buildings

Comments Relating to Assessment and Taxation

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18 (A) Definitions

(B) Authority to make agreements

(C) Acquisition and improvements of sites for institutions

18 (D) Prohibition against higher tax rate on Alberta residents or property

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(H) Effect on Alberta local and regional authorities of other jurisdictions' similar enactments

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